

1. SAO FINANCIAL INTELLIGENCE TOOL CONTRACT



STATE OF WASHINGTON AUDITOR'S OFFICE CONTRACT

AGENCY CONTRACT NO.

K570-SSC-1611

SECTION 1: PARTIES

This Contract ("Contract") is entered into by and **State Auditor's Office (SAO)** located at 3200 Sunset Way S.E., Olympia WA and **Beacon Crest IT Consulting, Inc. (Beacon Crest)**, a corporation licensed to conduct business in the state of Washington, located at 1433 12th Ave, Suite A1, Seattle, WA 98144.

SECTION 2: PURPOSE

The State of Washington Auditor's Office (SAO) is in need of senior level IT business/system analyst, project management and software development resources to augment their existing IT department to perform IT business and system analysis and programming services in support of ongoing maintenance and support initiatives for the Financial Intelligence Tool (FIT). The resources selected for this engagement are retained to provide "resource augmentation" to existing agency IT staff.

SECTION 3: STATEMENT OF WORK

Task Orders

Through individual Task Orders (Attachment D), the contractor will provide IT business and system analysis and programming services in support of ongoing maintenance and support initiatives for FIT.

The contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in the Task Orders when issued. However, the State Auditor's Office reserves the right to modify the Statement of Work, including deleting tasks, at critical points during the course of the contract.

All written work of the contractor will be expected to be of a professional quality acceptable to the State Auditor's Office.

Budget for task orders will be Flat Fee and will be agreed to in advance of performance of work.

IT Business/System Analyst & Project Management

As directed by the IT Applications Services Manager:

- Perform system analysis and document both business and system requirements necessary to meet the data collection and processing requirements of the project
- Manage the collection and documentation of system and business requirements, including developing documents such as high-level scope, detailed software requirements specifications, user screen mockups, entity and data diagrams, business process diagrams and procedures
- Participate in developing system test cases and performing system and integration testing, data analysis and system/business rule verification
- Lead and facilitate cross-division/work unit requirements gathering sessions involving agency business staff that possess diverse viewpoints and varying levels of understanding of computer systems
- Facilitate meetings that include both agency and local government and technical staff in the collection and documentation of system interface requirements with FIT
- Directly interface with the software development resources assigned to this effort in providing direction, clarification and explanations about how system changes are to be implemented in order to satisfy the requirements
- Perform knowledge transfer to SAO IT and business staff
- Prepare project plans with work breakdown to a level of detail where each task is no greater than 80 hours of work
- Project status updates and hold bi-weekly project status calls to review progress and discuss the next week's activity plan.



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Budget for IT business/system analysis services will be at the agreed to hourly rate, and the estimated hours will be agreed to in advance of performance of work.

IT Software Developer

As directed by the IT Applications Services Manager or technical lead, make coding changes to existing systems and backend interfaces, develop new user screens and interfaces, including search and workflow screens, undertake assigned coding and development assignments, implement database changes, perform developer level unit testing and participate in system design/review sessions. SAO anticipates that the IT software developers provided from this contract will receive much of their development direction in terms of implementation of business requirements from the IT Business/System Analyst also provided from this contract. The SAO designated technical lead may review the developers' code to ensure quality and that SAO development standards and practices are being followed.

Budget for IT software developer services will be at the agreed to hourly rate, and the estimated hours will be agreed to in advance of performance of work.

Travel

IT Applications Services Manager or business lead, travel time will be at the agreed to hourly rate, and the estimated hours will be agreed to in advance of performance of work.

WORK PERIOD OF PERFORMANCE START DATE November 1, 2016 **END DATE** October 31, 2017

This Contract may be extended by 3 additional one-year period(s) or otherwise amended at the sole discretion of the Agency by written agreement between the parties hereto.

SECTION 4: COMPENSATION

☒ **Check the appropriate Box and fill in the number of Workstations assigned, if applicable**

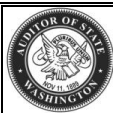
☒ Compensation for work associated with this Project will be based on completion or percentage completion of deliverables.

☒ The deliverables associated with this Project **cannot** be clearly **defined in advance**. The Contractor will be compensated based on hourly rate(s) for work actually performed.

☒ Yes ☐ No The Contractor will be provided assigned workstation(s) if required and approved by SAO at no cost to the Contractor.

BUDGET

	TASKS/DELIVERABLES	SKILL LEVEL	ESTIMATED HOURS	HOURLY RATE (IF APPLICABLE)	FLAT FEE (IF APPLICABLE)
1	Task Order As Assigned	Senior/ Expert	See task order		\$
2	IT Business/System Analyst & Project Management	Senior/ Expert	As needed	\$120.00	\$
3	IT Software Developer	Senior/ Expert	As needed	\$120.00	\$
4	Travel	N/A	As need	\$60.00	
(MAXIMUM COMPENSATION OF THIS CONTRACT) TOTAL COST					\$400,000.00



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AGENCY COST CODES

MASTER INDEX	FUND	APPN INDEX	OBJECT	SUB-OBJECT	DOLLARS
					\$
					\$
(MAXIMUM COMPENSATION OF THIS CONTRACT) TOTAL COST					\$

SECTION 5: SPECIAL TERMS & CONDITIONS

Contractor agrees to adhere to the attached SAO contract general terms and conditions outlined in Appendix A.

IN WITNESS WHEREOF, the parties have executed this Contract.

By signing below AGENCY and the CONTRACTOR acknowledge that this Contract. All rights and obligations of the parties are subject to and governed by the Contract including any subsequent modifications incorporated herein. The persons signing below warrant that they have the authority to execute this Contract.

CONTRACTOR NAME	BEACON CREST CONSULTING	AGENCY	STATE AUDITOR'S OFFICE
ADDRESS	2119-B 15TH AVE S. SEATTLE, WA 985122	ADDRESS	3200 SUNSET WAY S.E. P.O. Box 40031 OLYMPIA, WA 98504
EMAIL	INFO@BEACONCRESTCONSULTING.COM		
PHONE	(202) 251-4427		
(Signature) _____ (Date) _____		(Signature) _____ (Date) _____	
PRINT NAME		PRINT NAME	
TITLE		TITLE	
CERTIFICATE OF INSURANCE PROVIDED <input type="checkbox"/> YES <input type="checkbox"/> NO			
ENDORSEMENT PROVIDED <input type="checkbox"/> YES <input type="checkbox"/> NO			

Agency's Contract Manager and the Contractor's Project Manager
are responsible for and shall be the contact person for all communications/billings regarding performance of this Contract.

CONTRACTOR PROJECT MANAGER	SHAWN LOONEY	AGENCY CONTRACT MANAGER	MICHAEL MARTY
ADDRESS	1433 12 TH AVE, SUITE A1 SEATTLE, WA 98144	ADDRESS	3200 SUNSET WAY S.E. P.O. Box 40031 OLYMPIA, WA 98504
TELEPHONE NO.	(202) 251-4427	TELEPHONE NO.	(360) 725-5393
E-MAIL	SHAWN.LOONEY@BEACONCREASTCONSULTING.COM	E-MAIL	MICHAEL.MARTY@SAO.WA.GOV

Appendix A – SAO GENERAL TERMS AND CONDITIONS

DEFINITIONS -- As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "AGENCY" shall mean the Washington State Auditor's Office, any division, section, office, unit or other entity of the AGENCY, or any of the officers or other officials lawfully representing that AGENCY.
- B. "Agent" shall mean the Washington State Auditor's Office, and/or the delegate authorized in writing to act on the Auditor's behalf.
- C. "CONTRACTOR" shall mean that firm, provider, organization, individual or other entity performing service(s) under this Contract, and shall include all employees of the CONTRACTOR and all affiliated entities controlled by CONTRACTOR.
- D. "SubCONTRACTOR" shall mean one not in the employment of the CONTRACTOR, who is performing all or part of those services under this Contract under a separate Contract with the CONTRACTOR. The terms "SubCONTRACTOR" and "SubCONTRACTORs" means SubCONTRACTOR(s) in any tier.

ACCESS TO DATA -- In compliance with chapter 39.26 RCW, the CONTRACTOR shall provide access to data generated under this Contract to AGENCY,

ADVANCE PAYMENTS PROHIBITED -- No advance payment shall be made for services furnished by the CONTRACTOR prior to execution of this Contract.

AMENDMENTS -- This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35 -- The CONTRACTOR must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT -- Neither the AGENCY nor the CONTRACTOR shall assign this Contract, either in whole or in part, without prior written consent of the other party, which shall not be unreasonably withheld. Such assignment shall not relieve either party from its duties or obligations under this Contract.

BILLING PROCEDURES AND PAYMENT -- The AGENCY will pay the CONTRACTOR upon the AGENCY acceptance of services provided and receipt of properly completed invoices, which will be submitted to the Contract Manager in accordance with the schedule in each Task Order. The invoices will describe and document, to the AGENCY's satisfaction, an itemized description of the work performed and the progress of the work by deliverable as compared to the final Task Order Statement of Work, and fees. The invoices will include reference to Contract K570-SSC-1611. Payment will be considered timely if made by the AGENCY within thirty (30) calendar days after receipt of properly completed invoices. However, payment for each billing will be made after the AGENCY's determination that it is satisfied with the overall progress of the CONTRACTOR and the quality of each deliverable.

CHANGES AND MODIFICATIONS -- The AGENCY may, at any time, by written notification to the CONTRACTOR, make changes within the general scope of the services to be performed under this Contract. If any such changes cause an increase or decrease in the cost of, or the time required for the performance of this Contract, an equitable adjustment may be made in the Contract price or period of performance, or both, and the Contract shall be modified in writing accordingly. This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

COMMENCEMENT OF WORK -- No work shall be performed by CONTRACTOR until CONTRACTOR receives a signed Statement of Work (SOW) that has been properly signed by CONTRACTOR and AGENCY. The AGENCY will not compensate or reimburse the CONTRACTOR for work performed without a properly signed SOW.

COMPENSATION -- Total compensation payable to the CONTRACTOR for satisfactory performance of the work under this contract will not exceed \$400,000. The CONTRACTOR's compensation for services rendered will be based on the schedule set forth in the individual Task Orders when issued or as authorized. If the AGENCY decides to modify the Statement of Work, including deleting or adding tasks, at critical points during the course of the Contract, the parties will negotiate in good faith whether to make an adjustment to the compensation.

CONFIDENTIALITY/SAFEGUARDING OF INFORMATION -- The use or disclosure by any party of any information concerning the AGENCY, for any purpose not directly connected with the administration of the AGENCY's or the CONTRACTOR's responsibilities with respect to services provided under this Contract, is prohibited except by prior written consent of the AGENCY.

CONTRACTOR acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of AGENCY's Confidential Information. Where a party is permitted to release Confidential Information, such party agrees to do so only to employees, agents or subCONTRACTOR who are bound by appropriate nondisclosure obligations. Each party has the right to review the other's applicable standard agreements in that regard. Each party agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to the other's Confidential Information. Immediately upon expiration or termination of this Contract, the recipient of Confidential Information shall, at the other's option: (i) certify to the other that the recipient has destroyed all Confidential Information; or (ii) return all Confidential Information to other; or (iii) take whatever other steps the other requires of the recipient to protect the other's Confidential Information. Each party reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by the other through this Contract. Violation of this section by a recipient or its employees, agents or subCONTRACTORS may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

CONFLICT OF INTEREST -- The AGENCY may terminate this Contract, by written notice to the CONTRACTOR, if it is found after examination that there is a violation by the CONTRACTOR of: Ethics in Public Service Act, Chapter 42.52 RCW; or, Any similar statute involving the CONTRACTOR in the procurement of, or performance of services under this Contract.

In the event this Contract is terminated as provided above, the AGENCY shall be entitled to pursue the same remedies against the CONTRACTOR as it could pursue in the event of a

breach of the Contract by the CONTRACTOR. The rights and remedies of the AGENCY provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS -- Any written commitment by CONTRACTOR within the scope of this Contract shall be binding upon CONTRACTOR. Failure of CONTRACTOR to fulfill such a commitment may constitute breach and shall render CONTRACTOR liable for damages under the terms of this Contract. For purposes of this section, a commitment by CONTRACTOR includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by CONTRACTOR in its response or contained in any CONTRACTOR or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its response or used to effect the sale to AGENCY.

COVENANT AGAINST CONTINGENT FEES -- The CONTRACTOR warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the CONTRACTOR for the purpose of securing business. The AGENCY shall have the right, in the event of breach of this clause by the CONTRACTOR, to annul this Contract without liability or, in its discretion, to deduct from the Contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

DISPUTES -- In the event a bona fide dispute concerning a question of fact arises between the AGENCY and the CONTRACTOR and it cannot be resolved between the parties with the aid of their respective Contract administrators, either party may initiate the dispute resolution procedure provided herein. Disputes shall be resolved as quickly as possible. The initiating party shall prepare a written record of the dispute and clearly state: 1) the disputed issue; 2) the relative positions of the parties; and, 3) the CONTRACTOR's name, address, and AGENCY Contract number. The responding party must respond in writing within three (3) State working days. Then both parties shall have three (3) State working days to negotiate in good faith to resolve the dispute. If the dispute cannot be resolved after the three (3) days, a dispute resolution panel may be appointed. Each party will designate a panel member, and those two panel members will appoint a third individual to the panel. The panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time. AGENCY and CONTRACTOR agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible. Neither party shall commence litigation against the other before the panel has issued its decision on the matter in dispute. In the event of litigation or other action brought to enforce Contract terms, each party agrees to bear its own attorney fees and costs.

DUPLICATE PAYMENT -- The AGENCY shall not pay the CONTRACTOR, if the CONTRACTOR has charged or will charge the State of Washington or any other party under any other Contract or agreement, for the same services or expenses.

FAILURE TO PERFORM -- If CONTRACTOR fails to perform any substantial obligation under this Contract, Agency shall give CONTRACTOR written notice of such Failure to Perform. If after 30

calendar days from the date of the written notice CONTRACTOR still has not performed, then AGENCY may withhold all monies due and payable to CONTRACTOR, without penalty to AGENCY, until such Failure to Perform is cured or otherwise resolved.

GOVERNING LAW -- This Contract shall be governed by the laws of the State of Washington. In the event of a lawsuit involving this Contract, venue shall be proper only in Thurston County. The CONTRACTOR, by execution of this Contract, acknowledges the jurisdiction of the courts of the state of Washington in this matter.

INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE -- Each of the Exhibits and or reference listed below is by this reference hereby incorporated into this Contract. In the event of or inconsistency in this Contract, the inconsistency shall be resolved by giving precedence in the following order:

Applicable Federal and State of Washington Statutes and regulations
Terms and Conditions as contained in the body of the Contract document, as now written or subsequently written.

- A. EXHIBIT A – General Terms and Conditions
- B. Task Order #1 -

Any other provision, term or material incorporated herein by reference or otherwise incorporated.

INDEMNIFICATION/SAVE HARMLESS -- CONTRACTOR shall defend, indemnify, and save AGENCY, or any employees thereof, harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or negligent acts or omissions by CONTRACTOR, its officers, employees, or agents, or subCONTRACTORS, their officers, employees, or agents. Additionally, the CONTRACTOR shall defend, protect and hold harmless the state of Washington, the AGENCY, or any employees thereof, this includes, but is not limited to, from and against all claims, suits or actions arising from the CONTRACTOR's acts which are libelous or slanderous, which result in injury to persons or property, which violate a right of confidentiality, or which use or reproduce material of any kind that constitutes an infringement of any copyright, patent, trademark or trade name.

INDEPENDENT STATUS OF THE CONTRACTOR – In the performance of this Contract and any SOW, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint ventures, or associations of one another. The parties intent that an independent contractor relationship will be created by this Contract and any SOW. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. CONTRACTOR shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW for any work conducted under this Contract or any SOW.

INSURANCE COVERAGE – Prior to performing work under this Contract, the CONTRACTOR shall provide or purchase industrial insurance coverage for the CONTRACTOR's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this Contract. Should the CONTRACTOR fail to secure industrial insurance coverage or fail to pay premiums, as may be required under Title 51 RCW, the AGENCY may deduct the amount of premiums and any penalties owing from the amounts payable to the CONTRACTOR under the Contract and transmit the same to the Department of

Labor and Industries, Division of Industrial Insurance. This provision does not waive any right under RCW 51.12.050 to collect from the CONTRACTOR amounts paid by the AGENCY.

The AGENCY will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for this CONTRACTOR, or any SubCONTRACTOR or employee of the CONTRACTOR, which might arise under the industrial insurance laws during performance of duties and service(s) under this Contract. If the Washington State Department of Labor and Industries, upon audit, determines that industrial insurance payments are due and owing as a result of work performed under this Contract, those payments shall be made by the CONTRACTOR; the CONTRACTOR shall indemnify the AGENCY and guarantee payment of such amounts. Industrial insurance coverage through the Department of Labor & Industries is optional for sole proprietors, partners, corporate officers and others, under RCW 51.12.020.

The CONTRACTOR shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the State should there be any claims, suits, actions, costs, damages or expenses arising from any negligent or intentional act or omission of the CONTRACTOR or subCONTRACTOR, or agents of either, while performing under the terms of this Contract.

The CONTRACTOR shall provide insurance coverage that shall be maintained in full force and effect during the term of this Contract, as follows:

- A. Commercial General Liability Insurance Policy – Provide a Commercial General Liability Insurance Policy, including Contractual liability, in adequate quantity to protect against legal liability arising out of Contract activity but no less than \$1,000,000 per occurrence. Additionally, the CONTRACTOR is responsible for ensuring that any subCONTRACTORs provide adequate insurance coverage for the activities arising out of subcontracts.
- B. Automobile Liability – In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by the CONTRACTOR, automobile liability insurance shall be required. The minimum limit for automobile liability is \$1,000,000 per occurrence, using a Combined Single Limit for bodily injury and property damage.
- C. The insurance required shall be issued by an insurance company/ies authorized to do business within the state of Washington, and shall name the state of Washington, its agents and employees as additional insureds under the insurance policy/ies. All policies shall be primary to any other valid and collectable insurance. CONTRACTOR shall instruct the insurers to give AGENCY 30-days advance notice of any insurance cancellation.

CONTRACTOR shall submit to AGENCY within 15 days of the Contract effective date, a certificate of insurance that outlines the coverage and limits defined in the Insurance section. CONTRACTOR shall submit renewal certificates as appropriate during the term of the Contract.

LEGAL NOTIFICATION AND NOTICES -- Notices shall be effective upon receipt or five (5) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this Contract is served upon CONTRACTOR or AGENCY, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. CONTRACTOR and AGENCY further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

LICENSING, ACCREDITATION AND REGISTRATION -- The CONTRACTOR shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.

LIMITATION OF AUTHORITY -- Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Contract is not effective or binding unless made in writing and signed by the Agent.

LIMITATION OF LIABILITY -- The parties agree that neither CONTRACTOR nor AGENCY shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Records, Documents and Reports are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither CONTRACTOR nor AGENCY shall be held responsible for, nor deemed to be in default under this Agreement because of, any delay or failure in its performance if such delay or failure is the result of causes beyond its reasonable control (provided such causes do not result from the acts or omissions of such Party or its officers, managers, employees or personnel). Such causes shall include (without limitation) acts of God, fire, flood, earthquake, severe weather, transportation disruption, communications failure, failure of electronic or mechanical equipment, telephone or other interconnect problem, Internet problem, unauthorized access, theft, operator error, strike or other labor dispute, war, civil disruption, insurrection or any other cause beyond the reasonable control of such party (all such causes collectively referred to herein as "Force Majeure"). The Party affected by a Force Majeure shall, upon giving prompt written notice to the other Party thereof, be entitled to suspend its performance hereunder on a day-to-day basis to the extent of the prevention, restriction or interference caused by such Force Majeure; provided, however, that the Party affected shall at all times use its commercially reasonable efforts to avoid or remove such prevention, restriction or interference and to minimize the consequences thereof. The Party affected shall resume its performance immediately upon elimination or removal of such Force Majeure or its effects. To the extent the Party affected by such Force Majeure is entitled to suspend its performance; the Party not affected by such Force Majeure shall also be entitled to suspend its performance.

If delays are caused by a subCONTRACTOR without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule. Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

NONDISCRIMINATION -- During the performance of this Contract, the CONTRACTOR shall comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the CONTRACTOR's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy, this Contract may be rescinded, canceled or

terminated in whole or in part, and the CONTRACTOR may be declared ineligible for further Contracts with the AGENCY. The CONTRACTOR shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

OVERPAYMENT TO VENDOR -- CONTRACTOR shall refund to AGENCY the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If CONTRACTOR fails to make timely refund, Agency may charge CONTRACTOR one percent (1%) per month on the amount due, until paid in full.

OWNERSHIP/RIGHTS IN DATA -- Unless otherwise provided, all Materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the AGENCY. The AGENCY shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, CONTRACTOR hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to the AGENCY effective from the moment of creation of such Materials.

Materials means all items in any format and includes, but is not limited to work products, software, source code, intellectual property, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, CONTRACTOR hereby grants to the AGENCY a nonexclusive, royalty-free, irrevocable license (with rights to sublicense only to other SAO or Washington State entities) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The CONTRACTOR warrants and represents that CONTRACTOR has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the AGENCY. CONTRACTOR represents and warrants that CONTRACTOR has the right to develop and build materials specific to the AGENCY's needs as indicated by the AGENCY's business requirements that were provided in conjunction with the solicitation document and the CONTRACTOR's proposal response. Furthermore, the CONTRACTOR guarantees that the terms and conditions of this Contract and materials delivered to the AGENCY by the CONTRACTOR will not infringe upon any copyright, patent, trademark, or other intellectual property right worldwide or violate any third party's trade secret, Contract, or confidentiality rights worldwide. Contractor represents and warrants that: (i) Contractor is not aware of any material claim, investigation, litigation, action, suit or administrative or judicial proceeding pending or threatened based on claims that the materials infringe on any United States patents, copyrights, or trade secrets of any third party, and (ii) that CONTRACTOR has no actual knowledge that the materials infringe upon any United States patents, copyrights, or trade secrets of any third party.

The CONTRACTOR shall exert all reasonable effort to advise the AGENCY, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract. The AGENCY shall receive prompt written notice of each notice or claim of infringement received by the CONTRACTOR with respect to any data delivered under this Contract. The AGENCY shall have the right to modify or remove any restrictive markings placed upon the data by the CONTRACTOR.

PRIVACY PROTECTION – If personal information collected, accessed, used or acquired in connection with this Contract shall be used solely for the purposes of this Contract. CONTRACTOR and its employees and subCONTRACTORs agree not to release, divulge, make accessible, transfer, sell or otherwise make known to any unauthorized person any personal information without the express written consent of the AGENCY or as provided by law. CONTRACTOR agrees to implement physical, electronic and managerial safeguards and procedures to prevent any unauthorized access to, or use of, personal information. The AGENCY reserves the right to monitor, audit, or investigate the use of, or access to, personal information collected, accessed, used or acquired by the CONTRACTOR and its employees and subCONTRACTORs through this Contract. This monitoring, auditing or investigation may include, but is not limited to, "salting" by the AGENCY. This means the placement of data containing unique but false information into a database, which can later be used to reveal that unauthorized access, disclosure, or use of data within the database had taken place. The CONTRACTOR shall certify return or destruction of all personal information upon expiration of this Contract.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. CONTRACTOR agrees to indemnify and hold harmless the AGENCY for any damages arising from, or related to, unauthorized access to or use of personal information by CONTRACTOR, its employees, and its subCONTRACTORs.

For the purposes of this provision, personal information includes but is not limited to information identifiable to a natural person which relates to a natural person's health, medical condition or treatment, finances, education, business or business activities, insurance policies or Contracts within any line of insurance including but not limited to health care service Contracts or health maintenance agreements, life insurance, annuities, viatical settlements, insurance claims or complaints, any insurance product regulated or requiring approval by the Insurance Commissioner, use or receipt of governmental services or public funding, names, addresses including electronic addresses, telephone or fax numbers, social security numbers, driver license numbers, financial identifying information, and any other identifying numeric or alphanumeric information.

PATENT AND COPYRIGHT INDEMNIFICATION -- CONTRACTOR, at its expense, shall defend, indemnify, and save AGENCY harmless from and against any claims against AGENCY that any software product, services or work product supplied hereunder, or the use of the software product, services or work product as intended within the terms and scope of this Contract, infringes any United States patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party. CONTRACTOR shall pay all costs of such defense and settlement and any penalties, costs, damages and reasonable attorneys' fees awarded by a court or incurred by AGENCY provided that AGENCY:

Promptly notifies CONTRACTOR in writing of the claim, but AGENCY's failure to provide timely notice shall only relieve CONTRACTOR from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to CONTRACTOR; and

If such claim has occurred, or in CONTRACTOR's opinion is likely to occur, AGENCY agrees to permit CONTRACTOR, at its option and expense, either to procure for AGENCY the right to continue using the software product or work product or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the software product or work product is enjoined by a court and CONTRACTOR determines that none of these alternatives is

reasonably available, CONTRACTOR, at its risk and expense, will take back the software product or work product and provide AGENCY a refund. In the case of work product, CONTRACTOR shall refund to AGENCY the entire amount AGENCY paid to CONTRACTOR for CONTRACTOR's provision of the software product or work product. In the event the software product or work product has been installed less than one (1) year, all costs associated with the initial installation paid by AGENCY shall be refunded by CONTRACTOR.

PUBLICITY -- The award of this Contract to CONTRACTOR is not in any way an endorsement of CONTRACTOR or CONTRACTOR's Services by AGENCY and shall not be so construed by CONTRACTOR in any advertising or other publicity materials.

CONTRACTOR agrees to submit to AGENCY, all advertising, sales promotion, and other publicity materials relating to this Contract and Services furnished by Contractor wherein AGENCY's name is mentioned, language is used, or Internet links are provided from which the connection of AGENCY's name therewith may, in AGENCY's judgment, be inferred or implied. CONTRACTOR further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web and other communication media in existence or hereinafter developed without the express written consent of AGENCY prior to such use. Where applicable, the foregoing applies reciprocally in favor of CONTRACTOR with respect to publicity, statements and communications by AGENCY.

RECORDS, DOCUMENTS, AND REPORTS -- The CONTRACTOR shall maintain complete financial records relating to this Contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and all other evidence of accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. These records shall be subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the AGENCY, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement. The CONTRACTOR will retain all books, records, documents, and other materials relevant to this Contract for six years after the date of final payment by AGENCY, and make them available for inspection by persons authorized under this provision. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

RETAINAGE -- Ten percent of each payment will be withheld pending completion of each Task Order. Thirty days after the deliverables for each Task Order are accepted, the AGENCY Contract Manager will authorize payment in full of all retainage.

REGISTRATION WITH DEPARTMENT OF REVENUE -- The CONTRACTOR shall complete registration with the Washington State Department of Revenue and be responsible for payment of all taxes due on payments made under this Contract.

RIGHT OF INSPECTION -- The CONTRACTOR shall provide right of access to its facilities to the AGENCY, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

SALES TAXES -- AGENCY will pay sales and use taxes, if any, imposed on the Services acquired hereunder. CONTRACTOR must pay all other taxes including, but not limited to, Washington

Business and Occupation Tax, other taxes based on CONTRACTOR's income or gross receipts, or personal property taxes levied or assessed on CONTRACTOR's personal property. Agency, as an agency of Washington State government, is exempt from property tax. CONTRACTOR shall complete registration with the Washington State Department of Revenue. All payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance, or other expenses for CONTRACTOR or CONTRACTOR's staff shall be CONTRACTOR's sole responsibility.

SAVINGS -- In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the AGENCY may terminate the Contract under the "Termination for Convenience" clause, without the five days notice requirement, subject to renegotiations under those new funding limitations and conditions.

SEVERABILITY -- If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

SITE SECURITY –

- A. While on AGENCY's premises, CONTRACTOR, its subCONTRACTORS, employees, or subCONTRACTORS shall conform in all respects with physical, fire, or other security regulations.

- B. Information Technology Security

The State of Washington has defined common IT security standards to help ensure that agencies have an effective and secure environment for IT processing. The standards are defined by the Office of the Chief Information Officer (OCIO) and are available at <http://ofm.wa.gov/ocio/policies/manual.asp>. As part of these security standards, agencies are to require CONTRACTOR's compliance with the security standards relative to the services provided when the scope of work affects a state IT resource or asset. Therefore, CONTRACTOR agrees to provide security by a method and at a level that is in compliance with the OCIO Securing Information Technology Assets Policy and Securing Information Technology Standards, as well as AGENCY security policies, procedures, standards and requirements when any scope of work or service related to this work order affects a state IT asset. For example, any access to AGENCY systems will be allowed only through AGENCY's standard VPN access process, and onsite access to AGENCY systems will be controlled and/or supervised as AGENCY deems necessary for security purposes.

SUBCONTRACTING -- Neither the CONTRACTOR nor any subCONTRACTORS shall enter into subcontracts for any of the work contemplated under this Contract without obtaining prior written approval of the AGENCY. In no event shall the existence of the subcontract operator to release or reduce the liability of the CONTRACTOR to AGENCY for any breach in the performance of the CONTRACTOR's duties. This clause does not include Contracts of employment between the CONTRACTOR and personnel assigned to work under this Contract.

SURVIVORSHIP -- All license and purchase transactions executed and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in

this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Vendor; Ownership/Rights in Data; Access to Data; Vendor's Commitments, Warranties and Representations; Protection of Agency's Confidential Information; Incorporated Documents and Order of Precedence; Publicity; Records, Documents and Reports; Patent and Copyright Indemnification; Vendor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

TERMINATION OF CONTRACTOR STAFF -- With written notice of one (1) business day, the AGENCY may require the CONTRACTOR to replace either (a) a member of the CONTRACTOR's staff who has been assigned to this project; (b) a member of the subCONTRACTOR's staff who has been assigned to this project; or (c) a subcontractor that the CONTRACTOR has selected to work on this project without impacting the project schedule.

TERMINATION FOR CONVENIENCE -- Except as otherwise provided in this Contract, the AGENCY may, by ten (10) days written notice, beginning on the second day after the mailing or formal notification by fax, terminate this Contract, in whole or in part, when it is in the best interests of the AGENCY. If this Contract is so terminated, the AGENCY shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

TERMINATION FOR DEFAULT -- By written notice, the AGENCY may terminate this Contract, in whole or in part, for failure of the CONTRACTOR to perform any of the provisions of the Contract. In such event, the CONTRACTOR shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement Contract, e.g. cost of the competitive bidding, mailing, advertising and staff time; provided, that if (1.) it is determined for any reason the CONTRACTOR was not in default, or (2.) the CONTRACTOR's failure to perform is not the CONTRACTOR's and/or SubCONTRACTOR's fault or due to CONTRACTOR negligence, then the termination shall be deemed to be a "Termination for Convenience."

TERMINATION PROCEDURES -- Upon termination of this Contract, the AGENCY, in addition to any other rights provided in this Contract, may require the CONTRACTOR to deliver to the AGENCY any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The AGENCY shall pay to the CONTRACTOR the agreed upon price, if separately stated, for completed work and services accepted by the AGENCY, and the amount agreed upon by the CONTRACTOR and the AGENCY for (1.) completed work and services accepted by the AGENCY for which no separate price is stated, (2.) partially completed work and services accepted by the AGENCY, (3.) other property or services which are accepted by the AGENCY, and (4.) the protection and preservation of property, unless the termination is for default, in which case the AGENCY shall determine the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. The AGENCY may withhold payment for any amounts due the CONTRACTOR such sum as the AGENCY determines to be necessary to protect the AGENCY against potential loss or liability.

The rights and remedies of the AGENCY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a notice of termination, and except as otherwise directed by the Agency, the CONTRACTOR shall:

- A. Stop work under the Contract on the date, and to the extent specified, in the notice;
- B. Place no further orders or subContracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- C. Assign to the AGENCY, in the manner, at the times, and to the extent directed by the AGENCY, all of the rights, title, and interest of the CONTRACTOR under the orders and subContracts so terminated, in which case the AGENCY has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subContracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subContracts, with the approval or ratification of the AGENCY to the extent AGENCY may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the AGENCY and deliver in the manner, at the time, and to the extent directed by the AGENCY any property which, if the Contract had been completed, would have been required to be furnished to the AGENCY;
- F. Complete performance of such part of the work as shall not have been terminated by the AGENCY; and
- G. Take such action as may be necessary, or as the AGENCY may direct, for the protection and preservation of the property related to this Contract which is in the possession of the CONTRACTOR and in which the AGENCY has or may acquire an interest.

TREATMENT OF ASSETS -- Title to all property furnished by the AGENCY shall remain in the AGENCY. Title to all property furnished by the CONTRACTOR, for the cost of which the CONTRACTOR is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vests in the AGENCY upon delivery of such property by the CONTRACTOR. Title to other property, the cost of which is reimbursable to the CONTRACTOR under this Contract, shall pass to and vest in the AGENCY upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the AGENCY in whole or in part, whichever first occurs;

- A. Any property of the AGENCY furnished to the CONTRACTOR shall, unless otherwise provided herein or approved by the AGENCY, be used only for the performance of this Contract.
- B. The CONTRACTOR shall be responsible for any loss or damage to property of the AGENCY which results from the negligence of the CONTRACTOR or which results from the failure on the part of the CONTRACTOR to maintain and administer that property in accordance with sound management practices.
- C. Upon loss or destruction of, or damage to, any AGENCY property, the CONTRACTOR shall notify the AGENCY thereof and shall take all reasonable steps to protect that property from further damage.
- D. The CONTRACTOR shall surrender to the AGENCY all property of the AGENCY prior to settlement upon completion, termination or cancellation of this Contract.
- E. All reference to the CONTRACTOR under this clause shall also include CONTRACTOR's employees, agents or subCONTRACTORS.

VENDOR'S PROPRIETARY INFORMATION -- CONTRACTOR acknowledges that AGENCY is subject to chapter 42.56 RCW and that this Contract shall be a public record as defined in chapter 42.56 RCW. Any specific information that is claimed by CONTRACTOR to be Proprietary Information must be clearly identified as such by CONTRACTOR. To the extent consistent with chapter 42.56 RCW, AGENCY shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view CONTRACTOR's

Proprietary Information, AGENCY will notify CONTRACTOR of the request and of the date that such records will be released to the requester unless CONTRACTOR obtains a court order from a court of competent jurisdiction enjoining that disclosure. If CONTRACTOR fails to obtain the court order enjoining disclosure, AGENCY will release the requested information on the date specified.

WAIVER OF DEFAULT -- Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Contract unless stated to be such in writing, signed by the AGENCY and attached to the original Contract.

WORK PRODUCT, SOURCE CODE OWNERSHIP -- All delivered and accepted work products, source code, and related intellectual property are the sole property of the AGENCY without limitations or infringements from CONTRACTOR or third party entities.